

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	No. 13-CR-10200-GAO
)	
DZHOKHAR TSARNAEV)	

MOTION FOR DISCLOSURE OF JURY RECORDS

Defendant, Dzhokhar Tsarnaev, by and through counsel, and pursuant to the Fifth and Sixth Amendments to the United States Constitution, *Duren v. Missouri*, 439 U.S. 357 (1979) and the Jury Selection and Service Act, 28 U.S.C. §§1867 (a) and (f), respectfully moves this Court for an Order directing the Clerk of the U.S. District Court for the District of Massachusetts to make available to the defense and its expert, for inspection and copying, all records or papers used or relied up by the Clerk of this Court, the jury commission and the Jury Commissioner for the Commonwealth of Massachusetts and their designees, in connection with the selection process of the grand and petit juries during calendar years 2011, 2012 and 2013.

The information is necessary in order to adequately prepare and present defendant's claims under the Jury Selection and Service Act, 28 U.S.C. §§1861-1878 and the Fifth and Sixth Amendments to the United States Constitution. An unqualified right to this inspection is required by the plain text of 28 U.S.C. §§1867(f) and 1868. *See Test v. United States*, 420 U.S. 28 (1975) ("without inspection, a party almost invariably would be unable to determine whether he has a potentially meritorious challenge. Thus an unqualified right to inspection is required not only by the plain language of the text of

the statute, but also by the statute’s overall purpose of ensuring ‘grand and petit juries selected at random from a fair cross section of the community.’”)

The following grounds are asserted in support of this motion:

1. The defendant is entitled to trial by a jury composed of persons selected in accordance with the Constitution and laws of the United States, and which fairly represents a cross section of the community in which the defendant will be tried. *See* 28 U.S.C. §1861; *Duren v. Missouri*, 439 U.S. 357 (1975). The Jury Selection and Service Act also safeguards the right of all qualified citizens to be considered for service on grand and petit juries in the Federal district courts. *See* 28 U.S.C. §1861 (“It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.”)

2. The United States District Court for the District of Massachusetts revised its “Plan for Random Selection of Jurors” in March 2009, following litigation and the exposure of problems with the November 2000 Plan in *United States v. Darryl Green*, Cr. No. 02-10301 (D. Mass).

3. Inspection of the requested records will permit defendant to determine whether the amended plan corrected the underrepresentation errors identified in the *Green* case, and whether jurors have since been selected in accordance with the Jury Plan, the United States Constitution, and applicable statutes.

4. Defendant requests access to the following records:

- a. AO-12 Forms or JS-12 Forms completed for the Calendar Years 2011, 2012 and 2013 Master and Supplemental Jury Wheels during the life of the wheels;
- b. Other statistical analyses of the Calendar Years 2011, 2012 and 2013 Master and Supplemental Jury Wheels;
- c. Statistical or other analyses done that ensure that the Calendar Years 2011, 2012 and 2013 Master and Supplemental Jury Wheels meet the requirements of non-discrimination (Section 3 of The Plan for Random Selection of Jurors) and inclusiveness and representation (Section 5a of The Plan for Random Selection of Jurors);
- d. A blank juror summons/qualification form used to summon the Grand Jurors;
- e. Calendar Years 2011, 2012 and 2013 Master Jury Wheel data (in electronic and accessible form, including a layout with descriptions of all data fields and codes);¹
- f. Calendar Years 2011, 2012 and 2013 Supplemental Jury Wheel data (in electronic and accessible form and should include a layout with descriptions of all data fields and codes);²
- g. Results of the national change-of-address comparison for Calendar Years 2011, 2012 and 2013;³

¹ The data should not include any personally identifiable information such as Name and Street Address but should include Participant Number, Zip Code, County, Municipality, Date of Birth, Race and Ethnicity.

² The data should not include any personally identifiable information such as Name and Street Address but should include Participant Number, Zip Code, County, Municipality, Date of Birth, Race and Ethnicity.

³ The data should include the Participant Number for any person on the Master or Supplemental Jury Wheel whose address is determined to be undeliverable by the national change-of-address comparison and/or the Participant Number for any person on the Master or Supplemental Jury Wheel whose address has been updated by the national change-of-address comparison.

- h. All Draws from the Calendar Years 2011, 2012 and 2013 Master and Supplemental Jury Wheel;⁴
- i. Calendar Years 2011, 2012 and 2013 Actual Qualification Forms and Documentation for excusals and deferrals for each summons;⁵
- j. Access to the actual completed juror summons/qualification forms and documentation for excusals and deferrals for each summons.
- k. Source Data:
 - i. The municipal resident lists used to construct the Calendar Years 2011, 2012 and 2013 Master and Supplemental Jury Wheels (in electronic and accessible form including a layout with descriptions of all data fields and codes); ⁶
 - ii. Any statistical or other analyses of the municipal resident lists.

⁴ The data should include Participant Number, pool summoned for, date of summoning, type of jury service (grand or petit) and disposition for each summons sent during the life of the wheel. The disposition should indicate whether the summons was returned undeliverable, not responded to, disqualified, reason for disqualification, qualified, excused, reason for excusal, selected for jury service and/or served as a juror. The Participant Number will be used to collect the demographic information from the Master and Supplemental Jury Wheels data.

⁵ The personally identifiable information should be redacted or access could be limited to the office of the Clerk.

⁶ Personally identifiable information such as Name and Street Address should be redacted but information such as Zip code, County and demographic information and, if available, jury Participant Number should be retained.

Conclusion

Based on the foregoing, the defense requests that this Court Order disclosure of the above data and documentation to defense counsel. A proposed Order is attached.

Respectfully submitted,

DZHOKHAR TSARNAEV
by his attorneys

/s/ Judy Clarke

Judy Clarke, Esq. (CA Bar # 76071)
CLARKE & RICE, APC
1010 Second Avenue, Suite 1800
San Diego, CA 92101
(619) 308-8484
JUDYCLARKE@JCSRLAW.NET

David I. Bruck, Esq.
220 Sydney Lewis Hall
Lexington, VA 24450
(540) 460-8188
BRUCKD@WLU.EDU

Miriam Conrad, Esq. (BBO # 550223)
Timothy Watkins, Esq. (BBO # 567992)
William Fick, Esq. (BBO # 650562)
FEDERAL PUBLIC DEFENDER OFFICE
51 Sleeper Street, 5th Floor
(617) 223-8061
MIRIAM_CONRAD@FD.ORG
TIMOTHY_WATKINS@FD.ORG
WILLIAM_FICK@FD.ORG

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 13, 2014.

/s/ Judy Clarke